NEBRASKA CATTLEMEN

"Representing the state's largest ag industry"

April 7, 2003

Country of Origin Labeling Program
USDA/Agricultural Marketing Service
Stop 0249, Room 2092-S
1400 Independence Avenue, SW
Washington, DC 20250-0249

Re: Comments regarding Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling Under Authority of the Agricultural Marketing Act of 1946

Mr. Eric Forman:

Please find below comments submitted by the Nebraska Cattlemen regarding Guidelines for Voluntary Country of Origin Labeling (Public Law 107-171) issued in the *Federal Register* dates October 11, 2002. The Nebraska Cattlemen represents nearly 5,000 cattle breeders, producers and feeders across the state and provides the following perspective regarding this important federal rulemaking effort. Please direct any questions or comments to Greg Ruehle, NC Executive Vice President, at gruehle@necattlemen.org or the address and phone number listed below.

General Comments

NC policy (found below) supports COOL.

Country of Origin Labeling
WHEREAS, consumer confidence is a vital ingredient in the ability to sell beef, and
WHEREAS, consumers need information regarding the source of their meat products in order to have confidence in the food supply, and
WHEREAS, there is currently no labeling that gives the consumer this information.
THEREFORE BE IT RESOLVED that the Nebraska Cattlemen seeks a process for labeling "U.S. Beef" for the benefit of the consumer and the beef industry,
BE IT FURTHER RESOLVED that "U.S. Beef" be defined as product originating from cattle that were born, raised, slaughtered, and processed in the United States.

NC feels that the current guidelines are too cumbersome to be workable, especially when COOL becomes mandatory in October 2004. Without substantial changes, COOL will be unworkable and detrimental to the US beef industry.

As USDA considers development of the mandatory element of COOL, substantial changes must be made. NC would ask USDA to consider the following general ideas:

- Certifying US-origin cattle as groups, utilizing existing ID systems (brands, herd ID, etc.) to the greatest extent possible in order to reduce costs.
- Mandatory rules should not be same as for the voluntary program – many more cattle are included under the scope of a mandatory program than under a voluntary effort.
- Public Law 107-174 specifically forbids mandatory ID, but retailers could violate that intent by requiring such ID as a rule of participation in COOL programs.
- Limit individual identification requirements to imported cattle – cattle imported from Mexico have been branded upon import for years, as an example.
- Audit trail costs should be limited to imported products – permissive language ("Secretary may...") in that section provides the necessary discretion.

Specific Comments

[P. 63367, column 1]
Process will include rulemaking (proposal and opportunity for public comment) regarding establishment of mandatory labeling.

COMMENT: This is an important provision, given NC's that substantive concerns with the current guidelines will require substantial changes to the rule prior to implementation as a mandatory program.

[P. 63367, column 3]
"United States Country of Origin" label limited to animals exclusively born, raised and processed in the US, plus cattle born and raised in Alaska or Hawaii and transported for period not to exceed 60 days through Canada to US and slaughtered in US.

COMMENT: Proposed definition is consistent with NC policy

[P. 63368, column 1]
COOL requirements apply only to retailers (with cumulative invoice value exceeding $230,000 in any calendar year), excluding small grocery stores, butcher shops and fish markets. Food service establishments such as restaurants, bars, food stands and similar facilities are also exempt.

COMMENT: The scope of this exclusion (number of facilities, percent of total number of facilities, percent of total retail sales) is not quantified in the guidelines. Please define how many/what percent of retail sales are excluded as a result of this provision.

[P. 63368, column 1]
When mandatory labeling takes effect (Sept 30, 2004), USDA "may (emphasis added) require any person who prepares, stores, handles, or distributes a covered commodity for retail sale to maintain a verifiable recordkeeping audit trail." Additionally, under the mandatory labeling program, "suppliers are required to provide information to retailers indicating the country of origin of the covered commodity. Although the law states that the Secretary shall not use a mandatory identification system to verify country of origin under the mandatory labeling program, it does state that the Secretary may use, as a model, identity verification programs already in place. The law also provides enforcement procedures for the mandatory labeling program that includes fines, civil penalties, and cease and desist orders for retailers, packers, and other persons for willful violations."

COMMENT: The provision for a "verifiable recordkeeping audit trail" causes much heartburn for producers as they contemplate the impact of COOL regulations. The language above is very permissive, and would appear to support the notion of a less intrusive system than that proposed by the regulations. USDA should work with retailers, processors and producers to develop efficient and effective auditing procedures.

[P. 63368, column 2-3]
Definition of "covered commodity" excludes covered commodities that are "ingredients in a processed food item," but latter is not defined in law. The agency has chosen to define a "processed food item" in two ways – first, "a combination of ingredients that results in a product with an identity that is different from that of the covered commodity."

COMMENT: The first part of the definition seems logical.

[P. 63368, column 3]
The second definition of covered commodity includes "a commodity that is materially changed to the point that its character is substantially different from that of the covered commodity is also deemed to be a processed food item." [e.g., cooking, curing or restructuring] The second definition goes on to state: "However, covered commodities that retain their identity when combined with other ingredients, such as water enhanced case ready steaks, are not considered to be 'processed food items' under these guidelines."

COMMENT: The second part of this definition lacks the detail necessary to make the necessary distinction between covered commodities and those not covered.

[P. 63368, column 3 through P. 63369, column 1]
Whole muscle cuts are covered by the regulations if they are ingredients added to a product AND the whole muscle cut retains its character (if the processed item is significantly different [e.g., ready-to-cook Beef Wellington], materially changed [e.g., restructured steaks], or cooked and/or cured [e.g., bacon or corned beef brisket] than the covered commodity, they are excluded from regulations).

COMMENT: This provision appears logical to NC.

[P. 63369, column 1]
Ground beef sold at retail is a covered commodity, and FSIS standards do not allow added water, cereal, soy, etc. to ground beef.

COMMENT: NC supports efforts to make definitions and standards found in the COOL guidelines consistent with other areas of law.

[P. 63369, column 3 through P. 63370, column 1]
Labeling for imported products (produced entirely outside the US) is subject to current law (Federal Meat Inspection Act, etc.) which requires imports "to bear labels informing the 'ultimate purchaser' of their country of origin. Ultimate purchaser has been defined as the last U.S. person who will receive the article in the form in which it was imported."

The regulation further clarifies that "If the article is destined for a U.S. processor or manufacturer where it will undergo 'substantial transformation,' that processor or manufacturer is considered the ultimate purchaser. As a result, meat or other items have not been required to carry a country of origin mark after cutting or processing in the United States and may presently be labeled product of the United States."

Further, the regulations state that "the country of origin for products produced entirely outside of the United States shall be the country as specific by the requirements of existing Federal laws at the time the product arrives at the U.S. port of entry."

This section summarizes with the following statement: "retailers (and their suppliers) will have to maintain the country of origin identity of this class of products to the final point of sale of a covered commodity."

COMMENT: This is one of the most substantive issues in this program, and much of the reason that producer groups such as the Nebraska Cattlemen have requested COOL regulations for years. Under the current regulatory system (outlined above), the vast majority of imported product or product from imported animals is "lost" due to a lack of labeling requirements. If this provision were fixed (i.e., changes to the Federal Meat Inspection Act regarding labels for imported products), the necessity for mandatory COOL regulations would be greatly diminished.

[P. 63370, column 1-3]
Country of origin labeling for products that enter the United States during the production process (mixed origin that includes the United States) has yet another interpretation under the guidelines. The regulations are less specific with regard to products produced completely or in part outside the US. "In these cases, the law only requires that retailers inform consumers at the point of sale of a covered commodity of the country of origin."

The US slaughters animals born in foreign countries and raised at least a portion of the time in foreign countries and/or the US. In the absence of clear regulatory direction, "these guidelines provide a system where such products that were produced in both foreign markets and in the United States would be labeled to identify what production processes occurred in a foreign market and what production processes occurred in the United States, up to the point that the country of origin was determined." An example of an acceptable label would be: "From Cattle Imported from Country Y, Slaughtered in the United States" or "Born in Country X, Raised in Country Y, and Slaughtered in the United States."

COMMENT: NC is not sure that Congress had in mind those labels used as examples for this section. It seems that a label designating product as a "blend of domestic and imported products" would suffice, especially when compared to other simple label concepts – "born, raised and processed in the United States" and "imported product."

The guideline also allows for the words "slaughtered" and "processed" to be used interchangeably.

COMMENT: We agree.

[P. 63370, column 3 through P. 63371, column 1]
Regarding Country of Origin for Blended or Mixed Products, the guidelines require ground beef containing covered commodities from more than one country to label for country of origin for each "retail item by order of prominence by weight." An example follows: "'From Country X Cattle Slaughtered in the United States; Product of Country of Y; and United States Product' could be the label on package of ground beef for a mixture of three beef raw material sources." The guidelines "do not require the label to list the actual percentage of weight for each constituent ingredient."

COMMENT: See previous comments regarding consumer confusion – rather simplify the label so producers, retailers and consumers have a clearer picture.

[P. 63371, column 2]
State and Regional labeling programs, such as "Nebraska Corn-Fed Beef," have been determined by USDA to not meet the requirements of country of origin labeling as found in Public Law 107-171, and therefore "cannot be accepted in lieu of country of origin labeling."

COMMENT: The guidelines fail to provide an opportunity for such programs to develop a system that could be approved by USDA under COOL for utilization in this manner as well.

[P. 63371, column 2-3]
Regarding verification and enforcement of Country of Origin Labeling Claims, the law makes several statements that bear review and consideration. First, the requirements for compliance with Public Law 107-171 lie with retailers – "The Secretary may require that any person that * * * distributes a covered commodity for retail sale maintain a verifiable record keeping audit trail * * * to verify * * * compliance."

COMMENT: See earlier comment regarding the potential with permissive language here. USDA should strive to work with all segments of the beef production industry (i.e., retailers, processors and producers) to develop a logical process for COOL, rather than a punitive program that is inefficient and counterproductive.

The law goes on to state that "The Secretary shall not use a mandatory identification system to verify the country of origin of a covered commodity." The law does provide USDA with discretion to "use as a model certification programs in existence on the date of enactment of this Act."

COMMENT: Consistent with NC's policy, we support the notion of no mandatory individual animal identification for domestic production. Other concepts could be utilized to identify imports only (e.g., branding Mexican feeder cattle as a precedent), while domestic herds could be identified in groups or by premise, etc. USDA should make a strong effort in this area when developing the final guidelines.

[P. 63371, column 3 through P. 63372, column 1]
Records are required to be maintained for two years, but the guidance is unclear regarding when this two-year "clock" would begin.

COMMENT: The guidelines are unclear regarding when this two-year timeframe would begin – two years from retail sale, two years from production live animal, or some other parameter.

[P. 63372, column 1]
Labeling of Covered Commodities Marketed to Others besides Retailers – the guidelines reiterate that covered commodities sold to others besides retailers (butcher shops, food service establishments, and foreign outlets) do not apply. Instead, these products would only be labeled as they are currently required to be labeled under other existing programs.

COMMENT: The omission of food service outlets leaves arguably about 50% of the marketplace untouched by mandatory COOL labeling requirements. This has caused a stir among producers who wonder why such an omission is included with the law, and question its appropriateness under the mandatory program. Please provide further guidance regarding the nature of this exemption.

Closing

The Nebraska Cattlemen appreciate this opportunity to provide comments regarding the guidelines for COOL issued October 11, 2002. Please contact our office with any further questions or comments.